

## Message Text

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ACTION ARA-14

INFO OCT-01 ISO-00 CIAE-00 DODE-00 NSAE-00 NSCE-00  
SSO-00 ICAE-00 INRE-00 PM-05 H-02 INR-10 L-03  
PA-02 SP-02 SS-15 ACDA-12 AID-05 OMB-01 TRSE-00  
HA-05 JUSE-00 IO-14 /091 W  
-----073736 102038Z /41

O R 101901Z APR 78  
FM AMEMBASSY MONTEVIDEO  
TO SECSTATE WASHDC IMMEDIATE 6228  
INFO AMEMBASSY ASUNCION  
AMEMBASSY BRASILIA  
AMEMBASSY BUENOS AIRES  
AMEMBASSY SANTIAGO  
USCINCSO QUARRY HTS CZ

UNCLAS SECTION 1 OF 3 MONTEVIDEO 1203

E.O. 11652: N/A  
TAGS: SHUM, UY  
SUBJECT: RELEASE OF ABA VISIT MEMORANDUM AND GOU RESPONSE

REFS: (A) MONTEVIDEO 1192 (NOTAL), (B) MONTEVIDEO 1182  
(DTG 081652Z APR 78)

1. FOLLOWING IS EMBASSY TRANSLATION OF INITIAL GOU  
RESPONSE TO THE ABA AIDE MEMOIRE, SPANISH TEXT OF WHICH  
WAS TRANSMITTED REFTEL:

QUOTE. THE ARMED FORCES CONSIDERS IT NECESSARY TO TELL  
THE URUGUAYAN PEOPLE THAT THE VISIT OF DRS. BUTLER AND  
REQUE WAS IN RESPONSE TO A REQUEST MADE BY THE AMERICAN  
BAR ASSOCIATION THAT TWO OF THEIR REPRESENTATIVES MIGHT  
VISIT URUGUAY IN ORDER TO LEARN AND INFORM THEMSELVES  
REGARDING THE SITUATION OF CERTAIN URUGUAYAN PROFESSIONALS  
SUBMITTED TO JUSTICE, A REQUEST WHICH THE GOVERNMENT  
ACCEPTED COMPLETELY AT THE MOMENT.

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THAT (ACCEPTANCE) WAS UNDERSTOOD TO CONVEY THE NATIONAL  
FEELING OF CONTINUAL READINESS FOR FRANK AND OPEN DIALOGUE  
TO DISCUSS ANY SUBJECT, NO MATTER HOW COMPLEX IT MIGHT BE  
AND, AT THE SAME TIME, TO FULFILL THE ELEMENTARY COURTESY  
OF ATTENDING TO A RESPECTFUL VISITOR WHO WISHES TO KNOW THE  
NATIONAL REALITY.

THE ANALYSIS OF THE INTRODUCTION TO THE "MEMORANDUM"

DEMONSTRATES THE UNDERSTANDING THAT THE ABOVE NAMED JURISTS HAVE OF THE ATTITUDE OF THE ARMED FORCES, IN THAT THE CULTURAL BACKGROUND OF THE URUGUAYAN PEOPLE AND THE RICH JURIDICAL TRADITION OF THE COUNTRY, AS WELL AS ITS HISTORIC TRAJECTORY, ARE GUARANTEES OF A SUFFICIENT KNOWLEDGE AND EXPERIENCE TO MAINTAIN, AS IT HAS HAPPILY DONE, IN A PERMANENT AND CONTINUOUS MANNER, AN INDEPENDENT RULE OF LAW, LEGAL PROFESSION AND JUDICIAL SYSTEM IN URUGUAY.

ALTHOUGH THE SUBSTANCE OF THE "MEMORANDUM" PERTAINS TO THE INTERNAL JURISDICTION OF THE COUNTRY AND, CONSEQUENTLY, FALLS WITHIN ITS SOVEREIGN POWER, THE PRESERVATION OF WHICH IS THE FUNDAMENTAL MISSION OF THE ARMED FORCES, BECAUSE OF WHAT WAS NOTED ABOVE, THE ARMED FORCES DECIDED TO PUBLISH IT AND RESPOND TO IT IN AN APPROPRIATE WAY.

IN THE MATTER OF THE TREATMENT OF PRISONERS, THE RECOMMENDATIONS EXPRESSED HAVE NO UTILITY IN FACT, URUGUAY HAS RATIFIED THE "INTERNATIONAL COVENANT ON CIVILIAN AND POLITICAL RIGHTS", ADOPTED BY THE UNITED NATIONS GENERAL ASSEMBLY ON DECEMBER 16, 1966; THEREFORE, A REAFFIRMATION OF INTENTION TO FULFILL SOME OF ITS PROVISIONS IS ONLY A REITERATION WITHOUT MEANING. THE ENFORCEMENT AND EFFECTIVENESS OF ALL THE PROVISIONS CONTAINED IN THE ABOVEMENTIONED COVENANT WERE GUARANTEED MANY YEARS BEFORE ITS EXISTENCE, AS THEY STILL ARE, BY THE INTERNAL JURIDICAL ORDER OF URUGUAY, AN ORDER WHICH UNCLASSIFIED

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ALSO TAKES INTO ACCOUNT ADEQUATE LEGAL TERMS FOR THE SANCTION OF ANY GOVERNMENT AGENT WHO DEPARTS FROM THE STRICT FULFILLMENT OF HIS DUTIES IN THE ARREST AND DETENTION OF PERSONS. AT THE ADMINISTRATIVE AND THE JURIDICAL LEVELS, THERE IS AN UNBROKEN LINE OF PRECEDENTS WHICH IS ELOQUENT PROOF OF SUCH CONCERN.

WITH REFERENCE TO THE EXTENSION OF MILITARY JURISDICTION, IT WAS ESTABLISHED BY THE LAW FOR THE SECURITY OF THE STATE NO. 14,068 BECAUSE, WHEN NECESSARY, ONE MUST RESORT TO EXTRAORDINARY MEASURES TO SAFEGUARD THE EXISTENCE OF THE STATE. IN ORDER TO MAINTAIN A JURIDICAL ORDER, THERE MUST ALSO BE A STATE, SINCE IF THE STATE DISAPPEARS, SO DOES THE JURIDICAL ORDER ONE WISHES TO PROTECT.

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O R 101901Z APR 78  
FM AMEMBASSY MONTEVIDEO  
TO SECSTATE WASHDC IMMEDIATE 6229  
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UNCLAS SECTION 2 OF 3 MONTEVIDEO 1203

BECAUDE OF THE CRISIS WHICH BEGAN IN THIS COUNTRY,  
EMERGENCY LEGISLATION WAS NECESSARY, EXTENDING TO THE MILITARY  
JUSTICE SYSTEM JURISDICTION OVER CRIMES AGAINST THE NATION,  
AGAINST THE STATE IN CRISIS AND, THEREFORE, AGAINST  
ALL JURIDICAL ORDER.

IN ANY PERIOD OF CRISIS THERE IS AN EMERGENCY  
LEGALITY WHICH CANNOT BE THE LEGALITY OF NORMAL TIMES,  
AND THIS IS THE SITUATION FROM WHICH THIS COUNTRY HAS  
NOT YET EMERGED, THOUGH THERE HAVE BEEN EFFECTIVE STEPS  
TOWARD THAT END.

WITH RELATION TO OTHER ASSERTIONS MADE IN THE  
"MEMORANDUM", IT IS APPROPRIATE TO EXPRESS THE FOLLOWING:  
-ALL THE CASES IN THE SUMMARY STAGE OF INDICTMENT  
REFER TO DETAINED PERSONS WHO HAVE CRIMINAL LIABILITY FOR  
THEIR ACTS OR OMISSIONS. THERE IS NO INDICTMENT IF THERE  
IS NOT FULL CAUSE AND COMPLAINT OF THE INDIVIDUAL'S HAVING  
COMMITTED A CRIME. IF THIS FULL CAUSE AND COMPLAINT IS  
NOT CONFIRMED, THE PERSON IS NOT INDICTED, THEREBY IMMEDIATELY  
CLOSING THE PROCEEDINGS AND FREEING THE DETAINEE. MOREOVER,  
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IN ALL CASES THERE IS LEGAL RECOURSE WHICH PREVENTS PERSONS  
REMAINING DETAINED, WHEN THERE IS INSUFFICIENT PROOF.  
--THERE ARE NO DETAINED PERSONS UNDER MILITARY JURIS-  
DICTION WHO ARE NOT DIRECTLY IMPLICATED IN SUBVERSIVE ACTIVITIES  
OR MILITARY CRIMES; THEREFORE, THERE CANNOT EXIST THE HYPO-  
THESIS OF LIBERATING 500 PERSONS IN THE PERIOD OF EIGHT  
MONTHS WHO ARE DIRECTLY TIED TO IN SUBVERSION. THE FIGURES

ON THE LIBERATION OF DETAINED PERSONS IN 1977 AND 1978 THAT ARE MENTIONED IN THE "MEMORANDUM" ARE EXACT, BUT ALL THOSE PERSONS WERE SUBVERSIVES WHO HAD A LESSER DEGREE OF CRIMINAL RESPONSIBILITY AND, AFTER THOROUGH ANALYSIS OF EACH CASE BY THE MILITARY JUSTICE ORGANS, IT WAS DECIDED TO FREE THEM.

--RECOURSE TO "HABEAS CORPUS" HAS FUNCTIONED NORMALLY DURING THE ENTIRE EMERGENCY PERIOD THAT THE COUNTRY HAS LIVED THROUGH. THERE ARE MANY CASES PRESENTED THE MILITARY JUSTICE SYSTEM WHICH HAVE RECEIVED APPROPRIATE HEARINGS. BUT WHEN PERSONS HAVE BEEN DETAINED UNDER THE (EMERGENCY) SECURITY MEASURES, SUCH RECOURSE WAS NOT APPLICABLE. THIS HAS BEEN THE COMMON JURISPRUDENCE OF ALL CIVILIAN AND MILITARY TRIBUNALS OF THE NATION FOR MANY YEARS.

--THERE IS NO ISSUE OF THE ARREST AND INDICTMENT OF LAWYERS FOR THE FULFILLMENT OF THEIR FUNCTIONS, SINCE THERE NEITHER ARE NOR EVER HAVE BEEN SUCH CONCRETE CASES IN URUGUAY. REFERRING TO THOSE OF DRS. SCHURMANN PACHECO, JUAN JOSE FRAGA AMOROSO, HUGA FABRI AND EMILIO BIASCO, IT SHOULD BE MENTIONED THAT THEY WERE INDICTED BECAUSE THEY WERE CHARGED BY THE COMPETENT JUSTICE SYSTEM WITH CRIMES EXPRESSLY PROSCRIBED BY THE MILITARY PENAL CODE, WITHOUT REFERENCE TO THEIR PROFESSION. IN ITS PREFERENCE TO THE RESTORATION OF THEIR RIGHTS TO PRACTICE LAW, THE ORGANIZATIONAL CODE OF THE TRIBUNALS ESTABLISHEDS THAT,

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IN THE CASE OF INDICTED LAWYERS, THEIR PRACTICE IS TO BE PREVENTIVELY SUSPENDED BY THE COURT OF JUSTICE (ARTICLE 228, PARAGRAPH 3). IF THE INDICTED AND SUSPENDED LAWYER REQUESTS FROM THE COURT THE RESTORATION OF HIS PROFESSIONAL FRANCISE, THE COURT CAN GRANT IT INSOFAR AS IT DOES NOT INJURE THE DIGNITY OF THE PROFESSION. BUT, NATURALLY, TO OBTAIN THIS RESOTRATION THERE MUST BE AN EXPRESS PETITION FROM THE SUSPENDED LAWYER (ARTICLE 229); THE COURT CANNOT RESTORE IT "EX OFICIO" SINCE IT WOULD CERTAINLY INJURE THE LAWYER'S RIGHTS TO OBLIGE HIM TO PRACTICE A PROFESSION WHICH HE DOES NOT WISH TO CONTINUE.

--WITH RESPECT TO INSTITUTIONAL ACT NO. 8, WHICH REFORMS THE JUDICIARY, IT IS IMPORTANT TO STATE THAT THIS DECREE IS NOT A CAPRICIOUS CREATION, BUT ONE THAT HAS MODERN LEGAL ANTECEDENTS, IN PARTICULAR, THE PHILOSOPHY OF FUNDAMENTAL CHARTERS IN FORCE WITH VERY POSITIVE RESULTS IN DIFFERENT WESTERN NATIONS. MOST ESPECIALLY, IN THE CONSITUION OF FRANCE OF 1958, THE OLD CONCEPTION OF THE JUDICIAL POWER WAS REPLACED BY A FORMUAL, WHICH --BECAUSE OF ITS EFFICIENCY-- IS IMPORTANT TO TRY OUT IN A TRANSITION PERIOD SUCH AS THE ONE IN WHICH WE ARE PRESENTLY LIVING, ADAPTING IT AS APPROPRI-

ATE. IT IS A TENTATIVE AND EXPERIMENTAL FORMULA, LEADING  
TOWARD A PERFECTED AND PURIFIED INSTITUTIONAL STRUCTURE  
WHICH WILL SOON BE RATIFIED, IN THE NEW CONSTITUTION, BY THE  
REPUBLIC. IN THIS SENSE, NATURALL, A DIALOGUE IS ACCEPTABLE  
IN THE FACE OF REALITIES WHICH AID IN ITS SERIOUS  
FORMULATION.

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O R 101901Z APR 78  
FM AMEMBASSY MONTEVIDEO  
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--THE ARMED FORCES SHARE, WITHOUT RESERVE AND  
WITH SPECIAL EMPHASIS, THE CONCEPTS THAT ARE EXPRESSED IN  
THE PARAGRAPH RELATING TO THE SCHOOL OF LAW IN THE PRE-  
SENTED "MEMORANDUM". FOR THAT, IT IS ENOUGH TO REFER TO  
THE JUDGMENT OF PUBLIC OPINION WHICH, CERTAINLY, HAS NOT  
FORGOTTEN THE EXPERIENCES UNDERGONE IN THE UNIVERSITY  
OF THE REPUBLIC IN VERY RECENT TIMES, IN WHICH THE FREEDOM OF  
THE PROFESSORS, THE FREEDOM OF TEACHING AND THE INBORN  
RIGHT TO LEARN, WERE DISTORTED AND VILATED BY A CLIMATE OF  
VIOLENCE AND ANARCHY WHICH TOUCHED EQUALLY BOTH PROFESSORS  
AND STUDENTS.

BECAUSE, NO DOUBT, THERE MUST REMAIN THE MEMORY  
OF THOSE STILL RECENT TIMES, OF THE EXPULSION OF THE MOST  
ILLUSTRIOUS AND INTERNATIONALLY-FAMOUS PROFESSORS, OF THE  
"ANTI-COURSES" AND THE "DE-UNIONIZATIONS" AND ALL SORTS OF  
VIOLENT AND FOREIGN-INSPIRED IDEOLOGICAL MANIFESTATIONS.

IT WAS PRECISELY UPON THE OVERCOMING OF ALL THESE

EVILS THAT STUDENTS AND PROFESSORS WERE PERMITTED TO FEEL  
FREE TO ATTAIN THEIR ACADEMIC GOALS.  
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IN CONCLUSION, REITERATING THAT THE GUIDING OF A  
STATE IS THE EXCLUSIVE DOMAIN OF ITS AUTHORIZED OFFICIALS,  
AS AN EXPRESSION OF ITS SOVEREIGN EXISTENCE WHOSHE ABDICA-  
TION THE ARMED FORCES WOULD NEVER ALLOW, IT IS CONFIRMED  
THAT THE STATE'S PERFORMANCE HAS BEEN WITHIN THE FRAMEWORK OF  
THE NORMS ACCEPTED BY CIVILIZED NATIONS.

ALSO REAFFIRMED IS THE BELIEF THAT THIS POLICY WILL  
LEAD TO THE EARLY ESTABLISHMENT OF A NEW INSTITUTIONAL  
STRUCTURE WITH A DEFINITE CHARACTER WHICH, IN A NEW  
REPUBLICAN-DEMOCRATIC SYSTEM, MAY REACH THE FUNDAMENTAL  
GOAL OF GENERAL WELL-BEING (IN A CLIMATE OF) JUSTICE AND  
PEACE, WITH FREEDOM (ACCOMPANIED BY) SECURITY AND DEVELOPMENT.  
END QUOTE.

2. PLEASE PASS THIS TRANSLATION TO MR. BUTLER, WHO WILL  
BE IN WASHINGTON TUESDAY APRIL 11.

3. EMBASSY COMMENTS WILL FOLLOW IN SEPTTEL.  
PEZZULLO

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## Message Attributes

**Automatic Decaptioning:** X  
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**Type:** TE  
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